The latter constitutes a new contract, complete with present consideration. See 3 WILLISTON, CONTRACTS, § 1862. The statutory requirement that a new promise be in writing should apply only to the former. *Devine* v. *Murphy*, 168 Mass. 249, 46 N. E. 1066. This distinction is not consistently drawn, but is suggested in several cases. See *Delabarre* v. *McAlpin*, 101 App. Div. 468, 471, 92 N. Y. Supp. 129, 131. If a new promise must be in writing, it should be entirely immaterial, on principle, whether it was made before the original indebtedness was barred, or after. *Wells* v. *Moor*, 42 Tex. Civ. App. 47, 93 S. W. 220; *Matter of Goss*, 98 App. Div. 489, 90 N. Y. Supp. 769. But a number of cases agree with the principal case in holding that the requirement does not apply to an account which was stated before the statute had run upon the prior indebtedness. *Fox* v. *Patachnikoff*, 75 Misc. 113, 132 N. Y. Supp. 840; *Auzerais* v. *Naglee*, 74 Cal. 60, 15 Pac. 371.

MANDAMUS — ACTS SUBJECT TO MANDAMUS — INJUNCTION IMPROPERLY DENIED MAY BE OBTAINED BY MANDAMUS. — The plaintiff's building encroached upon a public street. A judgment was obtained ordering its abatement as a public nuisance. The municipal council passed an ordinance granting title to the street to the plaintiff in exchange for other land. The plaintiff's application for a temporary injunction restraining the execution of the judgment was denied. The plaintiff then applied for a writ of mandamus ordering the lower court to issue the injunction. *Held*, that the writ of mandamus will lie. *State ex rel. Ruddock Orleans Cypress Co.* v. *Knop*, 86 So. 493 (La.).

Mandamus will not lie if there be any other adequate remedy, such as appeal or writ of error. *Ex parte Virginia Commissioners*, 112 U. S. 177; *People* v. *Crennan*, 141 N. Y. 239, 36 N. E. 187. A public officer cannot be mandamused to perform duties involving the use of discretion. *Secretary* v. *McGarrahan*, 9 Wall. (U. S.) 298; *People* v. *Commissioners*, 149 N. Y. 26, 43 N. E. 418. The Louisiana Code substantially embodies these two principles. See GARLAND'S REVISED CODE OF PRACTICE OF LOUISIANA, Art. 831, 837. It does not appear that the plaintiff's remedy by appeal would have been inadequate. Moreover, the granting or withholding of an injunction by a court is not regarded as a ministerial act. *McMillen* v. *Smith*, 26 Ark. 613. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., 181. The Louisiana courts, however, have ruled persistently that when a plaintiff presents a case plainly calling for injunctive relief, it is but a ministerial act to grant the injunction. *State* v. *Young*, 38 La. Ann. 923; *State* v. *Judge*, 40 La. Ann. 206, 3 So. 561; see *State* v. *Judge*, 36 La. Ann. 578, 580–582. These decisions ignore the fact that the determination of what is the proper law in a particular case necessitates the exercise of judgment — the criterion of a discretionary act. An injunction does not issue mechanically as an automobile license upon the fulfillment of the requirements of a specified statute. It is difficult to support the principal case.

MARRIAGE — VALIDITY — COMMON-LAW MARRIAGE — MISTAKE AS TO EXISTENCE OF PRIOR MARRIAGE BETWEEN THE PARTIES. — A man divorced from his former wife induced her, by a false statement that he had not procured a divorce, to resume marital relations with him. *Held*, that the woman is entitled to a widow's interest in his estate. *Wandall's Estate*, 77 Leg. Intell. 925 (Pa.).

The fundamental principle of all marriage is mutual consent. *Great Northern Railway Co.* v. *Johnson*, 254 Fed. 683; *Dorgeloh* v. *Murtha*, 92 Misc. 279, 156 N. Y. Supp. 181. See 1 HOWARD, HISTORY OF MATRIMONIAL INSTITUTIONS, 201. But if one party, apparently consenting, thereby induces the other party reasonably to enter a matrimonial relation with him, his lack of actual consent will not invalidate the marriage. *Williams* v. *Kilburn*, 88 Mich. 279, 50 N. W.

293. So there might be a valid marriage in this case, although the man's actual intent probably was to induce cohabitation without marriage. See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, §§ 327, 334. The woman, however, did not consent to get married, for she supposed herself already married to this man. But she did intend to maintain presently and permanently a marital, not an illicit, relation with him. Such consent should be sufficient for a common-law marriage. *Matter of Sheedy*, 189 App. Div. 582, 178 N. Y. Supp. 863. See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 301. The same kind of consent is involved where the marital relation continues after the impediment to a previous invalid marriage is removed, and these are generally held valid common-law marriages. *Erwin* v. *Nolan*, 217 S. W. (Mo.) 837; *Sims* v. *Sims*, 85 So. (Miss.) 73. See 27 HARV. L. REV. 378. The question is a practical one and the practical answer of the principal case should prevail over logical refinements.

MASTER AND SERVANT — WORKMEN'S COMPENSATION — ILLEGAL EMPLOYMENT — LIABILITY OF CHARITABLE INSTITUTION. — The plaintiff, a minor, was employed by a hospital. While engaged in certain work in violation of a child labor statute, she was injured through the negligence of her employer in failing to provide safe appliances with which to work. She sought to recover under the Workmen's Compensation Act. *Held*, that she may do so. *Wargo* v. *State Workmen's Insurance Fund*, 68 Pitt. L. J. 661 (Pa.).

It is generally held that one who is illegally employed is not within the Workmen's Compensation Acts. *Kemp* v. *Lewis*, [1914] 3 K. B. 543; *Messmer* v. *Industrial Board*, 282 Ill. 562, 118 N. E. 993. *Ide* v. *Faul & Timmins*, 179 App. Div. 567, 166 N. Y. Supp. 858, *contra*. This rule is followed in Pennsylvania. *Lincoln* v. *National Tube Co.*, 68 Pitt. L. J. (Pa.) 102. However, the injured person has a remedy at common law, in the ordinary case. *Strafford* v. *Republic Iron Co.*, 238 Ill. 371, 87 N. E. 358; *Braasch* v. *Michigan Stove Co.*, 153 Mich. 652, 118 N. W. 366. Hence there is no great injustice in denying compensation. But here the employer was a charitable institution. The older cases allowed no recovery against such an institution for torts, on the ground that the trust property could not be taken to pay a judgment. *Fordyce* v. *Library Association*, 79 Ark. 550, 96 S. W. 155; *Farrigan* v. *Pevear*, 193 Mass. 147, 78 N. E. 855. The later authorities, however, hold charitable institutions liable for torts to their employees in the same manner as private employers. *McInerny* v. *Hospital Association*, 122 Minn. 10, 141 N. W. 837; *Hewett* v. *Aid Association*, 73 N. H. 556, 64 Atl. 190; *Armendarez* v. *Hotel Dieu*, 145 S. W. (Tex. Civ. App.) 1030. This seems the better view. See 31 HARV. L. REV. 479. But Pennsylvania has clung to the older doctrine. *Fire Insurance Patrol* v. *Boyd*, 120 Pa. St. 624, 15 Atl. 553; *Gable* v. *Sisters of St. Francis*, 227 Pa. St. 254, 75 Atl. 1087. Hence, in the principal case, the plaintiff had no remedy at common law. The court said that, in order to prevent injustice, she would be allowed to recover under the Workmen's Compensation Act, contrary to the usual rule in cases of illegal employment. The result is desirable, although reached in a rather arbitrary way.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — NEGLIGENT EMPLOYER'S RIGHT TO REIMBURSEMENT FROM TORTFEASOR. — The plaintiff was injured in the course of his employment by the concurring negligence of his employer and the defendant. Compensation was awarded him. The Workmen's Compensation Act provided that when a third person was liable to the employee for the injury the employer should be subrogated to the right of the employee against the third person to the extent of the compensation payable. (7 PURDON'S PA. DIGEST, 13 ed., 7785.) The plaintiff claimed his full damages in the interest of himself and his employer. *Held*, that the defendant is liable